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THE BRITISH BLACKLIST

BY SYDNEY BROOKS

Few acts of the British Government during this war have been more widely misunderstood and, as a consequence, less favorably received in the United States than its publication last July of the so-called "blacklist." It staggered some of the warmest among the many warm supporters of the Allied cause in America. The pro-Germans fell upon it with a whoop of joy. The Press all but unanimously denounced it. Legitimate apprehensions and fantastic misapprehensions at once gathered around it. Some exceedingly plain-spoken language was used on the subject in Congress and the President was actually armed with certain powers of retaliation which he has not yet thought fit to use. Leagues were formed among traders in New York and elsewhere to urge vigorous action upon the Government. Protests poured into the State Department from places as remote from the scene of the European war as Manila and San Francisco. "Quite the most tactless, foolish and unnecessary act of the British Government during the war," wrote one of the sanest of the New York journals. Both in the popular and the official mind the "blacklist," it was very clear, aroused an equal degree of anxiety and resentment. It was felt to be an unwarrantable encroachment on "neutral rights." That it offended against international law was universally assumed. The discovery was even made that it violated a moral principle. "Morally, of course," declared the *New York Times*, "the thing is indefensible." Nobody apparently had a good word of any kind to say for this unclean offspring of an arrogant diplomacy. The best friends of the Allies could but shake their heads over it in mournful silence or disavowal. The "man in the street" became obsessed with the idea that the "blacklist" was the first clear sign of a British plot to "dominate the commerce

of the world." He had heard of the economic conference of the Allies at Paris. Here, he was convinced, he encountered its results in actual operation and in a highly sinister form. He pictured Great Britain as blacklisting, if necessary, the whole American continent, and he conveniently forgot to ask himself how such a proceeding would benefit British trade. I do not, indeed, know how any subject, least of all one of such transparent simplicity and directness, could have lent itself to greater distortions.

Even the State Department proved to be not immune from the prevailing hallucinations. On July 26, Mr. Polk, as Acting Secretary of State, addressed a note to the British Government that will scarcely, I think, rank among the happiest efforts of American diplomacy. It spoke of "The most painful surprise" with which the blacklist had been received by the people and Government of the United States; of the "harsh and even disastrous effects" it might have upon American trade and neutral rights; and of the limitless possibilities "of serious and incalculable interruption" to neutral commerce that were latent in it. Mr. Polk detected in the blacklist a principle that might render even American citizens in the United States liable to "punishment" should they choose to have business dealings with the proscribed firms. It "brushed aside," he announced, the main safeguards that had hitherto protected neutrals in time of war. It was "inevitably and essentially inconsistent with the rights of the citizens of all nations not involved in the war." In words of a sharpness unusual in diplomatic communications, Mr. Polk asserted of the blacklist that "it condemns without hearing, without notice and in advance." It was, he went on, "manifestly out of the question" that the Government of the United States should acquiesce "in such methods and applications of punishment to its citizens." While disclaiming any intention to shield Americans from the "legitimate consequences of unneutral acts or practices" he was accordingly constrained to call the attention of the British Government "in the gravest terms" to the "many serious consequences to neutral rights and neutral relations" which the blacklist "must necessarily involve." He wound up by opining that the British Government, being much absorbed in other directions, had acted in this matter without due reflection.

If the manner of this dispatch was not ingratiating, its

matter suffered from the more serious blemish of being for the most part irrelevant. A great many of Mr. Polk's arguments were directed to what might happen if the blacklist were something totally different from what it is. Hardly once did he come to close quarters with its actual scope or purpose or effects and never once did he, nor as a trained lawyer could he, challenge the principle on which it rests. The perils he saw, or thought he saw, in it, and against which he declaimed so vigorously, were almost wholly imaginary. The consequences that he assumed as flowing from its enforcement could be produced only by a measure to which the blacklist bears but the smallest resemblance. There was, indeed, nothing in his note to show that he had mastered the case he set out to destroy. He was throughout tilting not at the blacklist as it is but at some legendary caricature of it that never had a genuine existence and never could have so long as the British Government retains even a modicum of political sanity. The real value of Mr. Polk's dispatch was that it summarised most of the fears and not a little of the confusion of thought to which the discussion of the subject has given rise in the United States during the past few months. Those fears and that confusion of thought still to some extent exist. Within the last week or two I have come across statements on the blacklist that were at least as remote from the facts as, let us say, the average communiqué of the German Admiralty.

Yet the facts are quite simple. The British Government has forbidden all British subjects in the United Kingdom to trade with certain specified firms and individuals in the United States. In doing so it is acting, of course, absolutely within its rights. That, I believe, has not been and cannot be disputed by anyone. It is one of the clearest and most fundamental prerogatives of a sovereign State to control in whatever way it pleases the trading relations of its own subjects. No issue of international law can possibly arise in this connection, any more than it can arise when a Government forbids its subjects to import certain commodities, as the British Government has constantly done during the war. Such prohibitions fall entirely within the category of those rights the exercise of which is inherent in every State merely because it is a State. It is not a matter of international law at all, but simply and solely of municipal law. If the British or any other Government chooses to put a stop to commer-

cial relations between its nationals and certain persons in foreign lands and to impose penalties on such of its subjects as may disobey the order, that is altogether its own affair. No outside Government can challenge, none as a matter of fact has challenged, its liberty to do so. Certainly from the United States Government there has come no word of criticism that would even distantly suggest that Great Britain, in enacting these restrictions, was offending against any canon of international law or overstepping even by an inch the privileges that are inalienable from independence. You may criticise the policy of the blacklist from the standpoint of expediency or effectiveness; you may say that its military value is out of all proportion to the irritation it arouses; but you cannot deny its validity as an instrument of sovereignty. The New York journal which observed that the first thing to be said about it was that "Americans do not derive their right to trade from the consent of the British Government," very cleverly missed the whole point. The right of Americans to trade is not affected in any way by the blacklist. What is affected is the right of British subjects to trade with them; and that right can be abridged by the British Government in whatever fashion British interests demand. Great Britain by issuing a blacklist impairs no privilege or liberty of any American citizen, penalizes them not at all. They lie entirely outside its jurisdiction, and it claims no sort of authority over their affairs except such as is conceded by international law to every belligerent. The people whose trade the blacklist restricts are British subjects. The people upon whom falls the punishment for evading these restrictions are also British subjects. It is impossible therefore to pretend that in formulating these restrictions and instituting these penalties the British Government is in any single particular acting *ultra vires*.

That much being established, let us see what the blacklist is and what it does. It forbids British subjects *in the United Kingdom* to trade with certain firms and individuals in the United States. I have italicised the words "in the United Kingdom" because the impression prevails in America that the prohibition applies to the whole British Empire and to all British subjects wherever resident. That is not so. It is confined to those British subjects that are resident and carry on business within the area of the United Kingdom. To make it operative throughout the Empire would necessi-

tate the passing of similar legislation and the publication of an identical blacklist in every Crown Colony, Dependency, and self-governing Dominion under the British flag. Nothing of the kind has been attempted or even thought of. To make it operative, again, in neutral countries and wherever British subjects have planted themselves outside of British jurisdiction, would be flatly impossible. The blacklist, I must repeat, only prohibits trading between British subjects *in the United Kingdom* and certain corporations—about thirty in number—and certain individuals—about eighty in number—in the United States. There is nothing in it to prevent a British subject in Canada, for instance, or the Argentine from continuing and developing whatever commercial relations he may have with the American firms and persons named in the blacklist.

Another misconception which is singularly prevalent in the United States is that the blacklist is aimed with invidious sharpness at America and at American trade. That is the very reverse of the facts. In the first place the American blacklist is only one of many such lists. The British Government has found it necessary to cut down the trade of British subjects with firms not only in the United States but in every other neutral country without exception. More than that, it has cut down the trade of British subjects with firms and individuals domiciled in the countries of its Allies. There is, for example, a blacklist in Japan, readily concurred in and loyally supported by the Japanese Government. That disposes completely of the notion that Americans and American commerce have been singled out for special discrimination. United States citizens stand in this respect precisely on the same footing as the nationals of all other neutral lands. But the idea that the blacklist is directed against American or Brazilian trade or the trade of any other non-belligerent country rests on a hopeless misconception of its purpose. Its purpose, and its sole purpose, is to damage Germany. It has no other object in the world except to hamper Germany's commercial operations, diminish her resources, and so impair her capacity to maintain the war. Until that is grasped, until it is thoroughly realized that the blacklist is a defensive military measure expressing itself in terms of commerce but directed exclusively against the Central Powers, there can be no real approach to understanding it.

It follows from this that no firm has been placed on the blacklist either in the United States or elsewhere unless the British Government is satisfied that it is actively engaged in assisting the enemy. What qualifies a firm for inclusion in the blacklist, what makes it necessary to prohibit British subjects in the United Kingdom from having any dealings with it, is its German nationality or its German associations. A New York house carrying on a legitimate and genuinely neutral business with another house in Argentina or Holland or even dealing in non-contraband goods with Germany itself, has nothing to fear from the blacklist. But a New York house that actively espouses the German cause and uses its trading connections to add to Germany's military strength, is not unnaturally an object of British suspicion. There are many such German or semi-German firms all over the world. Viscount Grey, in his note of October 10, said:

The experience of the war has proved abundantly, as the United States Government will readily admit, that many Germans in neutral countries have done all in their power to help the cause of their own country and to injure that of the Allies. In fact, it would be no exaggeration to say that German houses abroad have in a large number of cases been used as an integral part of an organization deliberately conceived and planned as an engine for the furtherance of German political and military ambitions. It is common knowledge that German business establishments in foreign countries have been not merely centres of German trade, but active agents for the dissemination of German political and social influence and for the purpose of espionage. In some cases they have even been used as bases of supply for German cruisers, and in other cases as organizers and paymasters of miscreants employed to destroy by foul means factories engaged in making, or ships engaged in carrying, supplies required by the Allies. Such operations have been carried out in the territory even of the United States itself, and I am bound to observe, what I do not think will be denied, that no adequate action has yet been taken by the Government of the United States to suppress breaches of neutrality of this particularly criminal kind, which I know they are the first to discountenance and deplore.

When the British Government comes across a firm of this character and occupied in these activities, what does it do? It says to its own subjects: "This firm is in effect an enemy firm. It is working all day long in Germany's interests. To that we have no objection. It is acting within its rights. We have neither the wish nor the intention to interfere with its operations except when they transgress

our rights as a belligerent under international law. But we are not going to allow you, who are British subjects and under our jurisdiction, to furnish this firm with business facilities and to swell its business profits when we know that those facilities and those profits are being used to help the enemy and damage us. We therefore forbid you to have any dealings with it. It may ship goods wherever it likes, but it shall not do so in British bottoms. It may finance Germany to its heart's content, but not through British banks. It may carry on its business transactions and communications with Germany and with neutral countries to the full limit of its capacity, but not by the help of British cables. It may use its profits in any ways that its ingenuity may suggest to aid the enemy, but it shall do so without the assistance of British traders. We put it on a blacklist and we forbid you to have any dealings with it. We do so because evidence that seems to us conclusive is in our possession that this firm to the best of its power and ability is siding with the enemy and against us. We therefore send it—as far as you are concerned, but not as far as anyone else is concerned—to a commercial Coventry. You are hereby ordered to boycott it, and we shall visit with heavy penalties all of you who disobey this order. No British subject in the United Kingdom, if we can prevent it, shall help to buttress the firms that are actively assisting the enemy of Great Britain.”

Is there in this anything unreasonable, anything arbitrary, anything that trenches on neutral rights, anything that interferes with genuinely neutral commerce? Is not the blacklist, indeed, a weapon with which in our modern world of international credit and trading—a world so circumstanced that a German firm in New York can frequently be more useful to the German Government than a similar firm in Hamburg or Berlin—no belligerent can afford to dispense? I was greatly struck with the candor with which more than one of the firms that appeared on the American blacklist admitted that it had no complaints to make. “It is difficult,” said one, “to see what redress can be secured, if any. The British Government has a right to tell its subjects whatever it pleases.” “I do not see,” said another, “what there is to be done about it. It is the fortune of war. War is war, and what the British have done, I dare say the Germans would do if they had the opportunity, or

we Americans either, for that matter." There is a point in this latter remark which Americans, as it seems to me, might well ponder. It is as certain as anything can be that if and when the United States is involved in a struggle of the first-class, the blacklist will be an essential and indispensable instrument of American warfare; and it distresses me, as an old and sincere friend of the country, to see, in this as in so many other cases, the American Government taking up positions that it will be forced to abandon under the necessities of any great crisis.

It is, of course, possible that mistakes have been made in the compilation of the blacklist and that firms have been included in it that are innocent of any pro-German or anti-Allly activities. If so, as it has proved already in several instances, the British Government stands ready to correct the error, to remove the firm from the index and to restore to it the use of British ships, banks, cables and other facilities. But such mistakes must be very rare. How many Americans, I wonder, have any idea of the amount of information that is at the disposal of the British Government in all these matters? How many even realize that all cable communications between not only Germany and her Allies but between all the adjacent neutral countries on the one hand and the outer world of Asia, the United States and South America on the other, are in British possession or the possession of Britain's Allies? It is only and specifically as "an act of grace" on the part of the British Government that any cablegram can pass between Europe and the United States, or indeed between Europe and the rest of the world. I need hardly say that every cablegram is read by the British censors, that all wireless messages are similarly laid before them, and that the examination of the mail-bags supplies the last link in the chain of evidence. One may be pretty sure, therefore, that when the Government concludes that a given firm should be placed on the blacklist it has some substantial reasons for its decision and a very complete *dossier* with which to support them. Nevertheless mistakes must from time to time occur. When they do occur, and when it is demonstrated that they have done so, the British Government is only too happy to correct them.

It is only too happy for a reason that is so simple and so fundamental that a great many people overlook it. That reason is that it is not to the interests, but very much against

the interests, of the British Government to contract in any way the flow of British foreign trade. All British commercial policy is based on the theory that whatever impedes foreign commerce is bad and whatever expands it is good. And at a time like this it is of peculiar moment that Great Britain should maintain and if possible develop her foreign trade. On it she has built up her wealth and on her wealth depends her ability to support herself and her Allies through this stupendous conflict. There is absolutely no expansion of British foreign trade that the British Government just now would not welcome with especial heartiness. Yet this is precisely the moment it has chosen to inaugurate a policy that benefits neutral commerce and handicaps British. Of the many foolish things that have been said about the blacklist the most foolish of all is that it is part of a British campaign to dominate the trade of the world. As a matter of fact it is British subjects that suffer most from the operations of the blacklist through the severance of old connections, and the great difficulties, in such times as these, of forming new ones. It is British shipping companies, British importers, British financial houses, and so on, that find themselves cut off from business in neutral lands with firms that before the war and before the blacklist they traded with pleasantly and profitably. In some cases this business is lost altogether. In others it is diverted into genuinely neutral hands that have no taint of enemy association. In either event the British trader stands to suffer and the volume of British commerce to contract. That was one of the foreseen and inevitable results of the blacklist. But it could not be helped if the assistance that the Central Powers have derived from neutral lands was to be effectively checkmated. The British Government, so far from dreaming of a campaign of commercial conquest, demands through the policy of the blacklist sacrifices from its subjects which make it increasingly difficult for them to hold what trade they have. It does so in the overwhelming conviction that these sacrifices are worth the one object it has in view—the crippling of Germany. But whenever it finds that it can lessen the sacrifice without defeating the object, self-interest of the most compelling character urges it to seize the opportunity. Every name that can safely be removed from the blacklist adds something to the freedom of British trade. Every name that has to be kept on it by so much interrupts

that growth of British foreign commerce which was never of such vital consequence to Great Britain as now.

It is an old principle that the subjects of a belligerent Power should not trade with the enemy. But the definition of what constitutes enemy character has never been a matter of international agreement. France and Germany hold that it is settled by nationality or domicile. The French law forbids French citizens to do any business with enemy subjects wherever domiciled. The German law is to the same effect. No French citizen can trade today with any individual in the United States who owes allegiance to Germany. No German subject can trade with any individual in the United States who owes allegiance to any of Germany's enemies. The British and the American practice in such matters has been different. Great Britain and the United States used to argue that enemy character was determined by domicile alone. Thus a British subject might and still may lawfully trade with a German in the United States or anywhere else outside of Germany, but might not and may not trade with anyone in Germany itself. This rule was derived from the days when communications were bad and when it was practically impossible for anyone to help his country in time of war unless he were actually living in it. But nowadays, as I have said, a wholly new set of conditions obtains, and a German firm in New York or Copenhagen or Rotterdam, or a firm working in those cities in German interests, can often, and particularly in a war like the present, be of greater assistance to Germany than a firm of the same character in Dresden or Wilhelmshaven. The fact is that the old Anglo-American practice of regarding domicile as the test of enemy character has become wholly obsolete. The British Government, however, has not adopted the Continental doctrine that enemy character is settled either by domicile or by nationality. It has not proclaimed all German subjects in the United States or elsewhere to be enemies and as such debarred from all trading relations with Great Britain. It would have been fully justified in doing so by the established principles of international law. But it refrained from taking a course so certain to lead to confusion and mischief. Had it done so every firm and corporation with a German-sounding name would have come under suspicion. British subjects, in order to know with whom they were dealing, would have been obliged to ask for

credentials and guarantees, and the consequent uncertainty would have been little less than disastrous to American and neutral as well as to British interests.

In the blacklist the British Government has devised a weapon so far preferable to either the French and German or to the old British and American practice, that it must always, I should think, find a place in the recognized armory of the leading Powers. Its virtue is that it discriminates. It does not, for instance, place all German subjects in the United States under the ban. It leaves absolutely untouched all firms and individuals, even though of German nationality, that are engaged in innocent neutral trade and that have not unmistakably proved themselves to be working on behalf of the enemies of Great Britain. It is precise and definite and allows everyone to know just where he is. I have seen the suggestion made that there was no need to publish the blacklist, that the same results could have been secured without publicity, by hints and intimations and secret circulars or some sub-rosa arrangement. But in the first place the same results could not have been secured—imagine the British Government in the midst of Armageddon confidentially notifying hundreds of thousands of British traders they were not to deal with such and such a firm in Brazil or the United States; and in the second place, in these as in all other matters, the British, like the American Government, has an ineradicable preference for frankness. Granted that British facilities and British trade may rightly be withdrawn from the persons and corporations in neutral lands that are aiding the enemies of Great Britain, and I will defy anyone to suggest how it could have been done more considerately, more effectively or with less inconvenience to legitimate neutral trade than by means of the blacklist. For it must not be forgotten that the blacklist is only a white-list in disguise. By forbidding British subjects to deal with the few, it invites them to go on dealing with the many. If it condemns, say, thirty American firms, it also by implication exonerates all the rest.

But “the glaring vice” of the blacklist, I read, is that it “threatens something like a secondary boycott”, and that it is not merely a blacklist of firms that have traded with Germany, but “amounts to an embargo also upon American firms trading with the blacklisted concerns.” That is a complete hallucination. No such secondary boycott as

is hinted at was ever contemplated by the blacklist or can conceivably arise from it. What possible concern of the British Government could it be that an American firm in Wisconsin should carry on its normal and entirely legitimate business with a blacklisted firm in New York or Buenos Ayres? And even if the British Government had the leisure or the inclination to interest itself in such irrelevancies, by what magic arts could it inform itself of the facts? Americans can readily resolve all such conundrums for themselves by remembering that it is only firms which are actively assisting Germany that the British Government is proceeding against, that it is proceeding against them solely by forbidding British subjects in the United Kingdom to trade with them, and that the one and only object of its policy is not to damage neutral interests but to damage Germany. If an American firm were to step into the shoes of a blacklisted firm, were to continue its pro-German activities or to act as its cloak, then of course the newcomer would likewise be promoted to the blacklist. If a neutral ship, carrying the goods of a blacklisted firm, were to put into a British port and to attempt to buy bunker coal, the privileges it was in search of would naturally be refused. There is little enough coal and shipping as it is; and the British Government can hardly be expected to furnish the one and facilitate the other when both are being used to meet the needs of pro-German and anti-British agencies. With these two exceptions the blacklist has no derivative consequences of a kind that can militate against any genuine neutral trader. It is aimed exclusively at traders who have not been neutral but on the contrary the strenuous supporters of Great Britain's enemies. For that reason, and for that alone, they have been denied not the right to trade with Germany or any other country, but the privilege of carrying on that trade through the medium of British houses, British banks, British cables and British ships. The moment they decide that the British connection is, after all, more desirable than a continued conspiracy against the neutrality of the countries in which they are domiciled, that moment will see the restoration of all British facilities and the resumption of the old relations.

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